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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENE ORTIZ,
Plaintiff,
v.
ENHANCED RECOVERY COMPANY,
Defendant.

No. 2:17-cv-0607 KJM DB PS

ORDER

Plaintiff is proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On March 29, 2017, defendant Enhanced Recovery Company filed an answer to plaintiff's complaint. (ECF No. 3.) On June 5, 2017, plaintiff filed an amended complaint. On June 8, 2017, defendant filed a motion to strike. (ECF No. 10.) That motion is noticed for hearing before the undersigned on September 1, 2017. Defendant argues that plaintiff's amended complaint should be stricken because plaintiff failed to comply with Rule 15 of the Federal Rules of Civil Procedure. (Id. at 3.) And defendant is correct.

In this regard, pursuant to Rule 15, a plaintiff may amend his complaint once as a matter of course within twenty-one days after serving it or twenty-one days after service of a responsive pleading or motion pursuant to Rule 12(b). See Fed. R. Civ. P. 15. In all other cases, a plaintiff may amend his complaint with defendant's written consent or the court's leave. Id. Here, at the

1 time plaintiff filed his amended complaint more than twenty-one days had lapsed since the
2 defendant filed its answer and plaintiff did not seek the court's leave or obtained defendant's
3 written consent to amend. Accordingly, defendant's motion to strike will be granted.

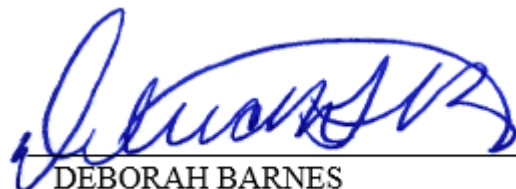
4 However, the court should grant leave to amend freely when justice so requires. Fed. R.
5 Civ. P. 15(a). In this regard, the Supreme Court has instructed lower courts to heed carefully the
6 command of Rule 15. See Foman v. Davis, 371 U.S. 178, 182 (1962). "[R]ule 15's policy of
7 favoring amendments to pleadings should be applied with extreme liberality." DCD Programs
8 Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987) (citations and quotations omitted).

9 The undersigned will, therefore, construe plaintiff's filing as a request for leave to amend,
10 will grant that request, and deem the amended complaint the operative pleading in this action.
11 Defendant shall file a response to the amended complaint within twenty-one days.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The September 1, 2017 hearing of defendant's motion to strike (ECF No. 10) is
14 vacated;
- 15 2. Defendant's June 8, 2017, motion to strike (ECF No. 10) is granted;
- 16 3. Plaintiff is granted leave to file an amended complaint;
- 17 4. The amended complaint filed June 5, 2017 is deemed the operative complaint in this
18 action¹; and
- 19 5. Defendant shall file a response to the June 5, 2017 amended complaint within twenty-
20 one days.

21 Dated: August 25, 2017

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24 
25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE

26 DLB:6

27 _____
28 ¹ In this regard, plaintiff need not file another amended complaint and shall not file another
amended complaint without complying with Rule 15.

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